2018 Case Law Update

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Case Law Update

Presented by:

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Pope v. Nebco of Cleveland, Inc.

- Special Workers' Compensation Appeals Panel January 16, 2018
- Facts: Employee injured his knee while competing in a "mud run" charity event sponsored by his Employer and other local businesses. Employer denied claim because it arose from his voluntary participation in a non-work related recreational event. Trial Court found the injury compensable. WCAB reversed, finding the injury non-compensable.

Pope v. Nebco of Cleveland, Inc.

- Issue #1: Employee challenged the constitutionality of the statutes establishing the WCAB, but was that issue waived because it was not raised in the proceedings below?

- Holding #1: No, because administrative tribunals have no authority to determine the facial constitutionality of a statute.

Pope v. Nebco of Cleveland, Inc.

- Issue #2: Do the statutes creating the WCAB violate the separation of powers required by Article II of the Tennessee Constitution?

- Holding #2: No, the appellate review exercised by the WCAB does not frustrate or interfere with the adjudicative function of the courts.

Pope v. Nebco of Cleveland, Inc.

- Issue #3: Do the statutes creating the WCAB violate Article VI of the Tennessee Constitution in the manner of appointment of the board, removal of board members, and the Executive Department's control of the board?
- Holding #3: No, Article VI does not prohibit the legislature from enacting laws providing for a different manner of appointment, removal, and level of executive control over administrative tribunals.

Pope v. Nebco of Cleveland, Inc.

- Issue: #4: Is the injury compensable?

- Holding #4: No, WCAB decision is affirmed. Employer satisfied all elements of the Recreational Activity defense, including proving the inapplicability of the four exceptions.

Batey v. Deliver This, Inc.

- WCAB, February 6, 2018

- Facts: Delivery driver was bending over to wrap a pallet when he felt a "pop" in his lower back and left leg. ATP performed surgery and subsequently placed Employee at MMI with 14% BAW. At compensation hearing, Trial Court ordered "extraordinary" benefits under TCA § 50-6-242.

Batey v. Deliver This, Inc.

- Issue #1: Did the Trial Court err in ordering "extraordinary" benefits under TCA § 50-6-242?
- Holding #1: No, the evidence did not preponderate against Trial Court's ruling. Limiting award to the default PPD formula would have resulted in an award significantly less than the vocational ratings from both vocational experts. Also, the ATP gave rating more than 10% BAW, the ATP certified the Employee could not return to his pre-injury occupation due to restrictions from his work injury, and Employee was not earning at least 70% of his pre-injury AWW.

Batey v. Deliver This, Inc.

- Issue #2: Is Employee entitled to pre-judgment interest?

- Holding #2: No, because it is inapplicable in workers' compensation cases.

Jacobs v. Bridgestone Americas Tire Operations, LLC

- WCAB, February 7, 2018
- Facts: Employee worked as a tire builder and an elected union official, and he suffered severe burns when a co-worker poured gasoline into a "burn barrel" outside the union hall during a break. Employer denied the claim on the basis that the accident did not occur in the course and scope of his work as a tire builder. Employer also argued that since Employee was working for the union at the time of the accident, the union should be responsible for any workers' compensation benefits owed.

Jacobs v. Bridgestone Americas Tire Operations, LLC

- Issue: Did the injury occur in the course and scope of employment?
- Holding: Yes, Trial Court's award of benefits affirmed. The personal comfort doctrine applied to bring injury within course and scope of employment even though it occurred during a break. While it is "foolhardy" to pour gasoline onto a fire, it was done by a co-worker, not Employee. Employer was found to be responsible for workers' compensation benefits, and not the union.

Bowlin v. Servall, LLC

- WCAB, February 8, 2018
- Facts: Employee injured in motor vehicle accident while traveling to a customer's home. Post-accident drug screen was positive. Employer denied claim using intoxication defense, citing presumption under the Drug-Free Workplace Program. Trial Court found Employer was not a participant in the program on the date of the accident and therefore not entitled to the presumption. Trial Court found Employer could not prove that drug use was the proximate cause of the accident and ordered medical benefits and attorney's fees.

Bowlin v. Servall, LLC

- Issue #1: Did Drug-Free Workplace presumption apply?
- Holding #1: No, while Employer had been a participant in the program in prior years, it was not a participant when Employee was injured. Since Employer presented no evidence that the drug was the proximate cause of the accident, the intoxication defense failed.

Bowlin v. Servall, LLC

- Issue #2: Did Trial Court err in awarding attorney's fees based on the amount of unpaid medical bills?
- Holding #2: Yes, at this juncture in the case. Per *Andrews v. Yates* (May 23, 2017), attorney's fees should be awarded at an interlocutory stage of a case only in extremely limited circumstances. This case did not qualify.

Thompson v. Comcast Corporation

- WCAB, January 30, 2018
- Facts: Employee suffered injuries when he fell from a ladder at work. Claim was accepted as compensable. During the course of authorized medical treatment, Employee was referred for pain management. Employer declined to provide a panel of pain management specialists, questioning whether the ongoing complaints were causally related to the work injury. ATP subsequently opined by letter and deposition that the need for pain management was causally related to the work injury. At expedited hearing, Trial Court found that Employee was entitled to pain management treatment with a provider of Employee's choice, and ordered attorney's fees.

Thompson v. Comcast Corporation

- Issue #1: Did Trial Court err in ordering pain management treatment?

- Holding #1: No, WCAB had "no difficulty" finding that Trial Court's order was supported by preponderance of the evidence.

Thompson v. Comcast Corporation

- Issue #2: Should Employer been ordered to pay for treatment with a pain management physician of Employee's choice?

- Holding #2: No, Employer should be required to give a panel.

Thompson v. Comcast Corporation

- Issue #3: Did the Trial Court err in ordering attorney's fees at this interlocutory stage in the case?
- Holding #3: No, attorney's fee award was affirmed. While this is appropriate at an interlocutory stage only in extremely limited circumstances, numerous factors supported the award in this case.

Ogden v. McMinnville Tool & Die, Inc.

- WCAB, May 7, 2018
- Facts: Employee injured his arm when he fell at work, and he subsequently developed CRPS. A spinal cord stimulator was surgically implanted into Employee's neck as part of his authorized treatment. While recovering from surgery, Employee fell twice at home and was rendered a paraplegic. Employer denied that the falls and resulting paraplegia were causally related to the work injury. Trial Court found the falls and paraplegia to be direct and natural consequence of the work injury and ordered permanent and total disability benefits.

Ogden v. McMinnville Tool & Die, Inc.

- Issue: Did the Trial Court err in finding the falls and paraplegia to be the direct and natural consequences of the work injury?

- Holding: No, the Trial Court's ruling was affirmed. There was no evidence that Employee acted in a negligent manner so as to break the chain of causation between the work injury and the subsequent falls.

Andrews v. Yates Services, LLC

- WCAB, May 8, 2018
- Facts: Assembly line worker injured his back and claim was initially accepted as compensable. However, claim was denied after ATP gave opinion that condition was not work related. Employee sought treatment on his own and obtained contrary causation opinion from his doctor. At expedited hearing, Trial Court accepted opinion of Employee's doctor and ordered benefits. Trial Court denied Motion for Attorney's Fees, finding that Employer acted reasonably at the time of denial. On appeal, WCAB vacated order on the grounds that attorney's fee issue should be addressed at conclusion of case. On remand, parties stipulated to PPD and Motion for Attorney's Fees was renewed. Trial Court denied Motion for Attorney's Fees, based on interpretation that "wrongfully" means that denial lacked good cause.

Andrews v. Yates Services, LLC

- Issue: What is the proper interpretation of "wrongfully" for purposes of attorney's fee statute?
- Holding: In order to "wrongfully" deny a claim, the Employer's denial must be erroneous, incorrect, or otherwise inconsistent with the law or facts. A Trial Court should analyze the Employer's decision ***at the time the denial decision was made***. In this case, even though WCAB disagreed with Trial Court's interpretation of "wrongfully," the denial of attorney's fees was upheld.

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